

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

ARTURO J. RODRIGUEZ,

Plaintiff,

Case No. 23-cv-1259-pp

v.

KILOLO KIJAKAZI,

Defendant.

**ORDER GRANTING PLAINTIFF'S MOTION FOR LEAVE TO PROCEED
WITHOUT PREPAYING FILING FEE (DKT. NO. 2)**

The plaintiff has filed a complaint seeking judicial review of a final administrative decision denying his claim for disability insurance benefits under the Social Security Act. Dkt. No. 1. He also filed a motion for leave to proceed without prepaying the filing fee. Dkt. No. 2.

To allow the plaintiff to proceed without paying the filing fee, the court first must decide whether the plaintiff can pay the fee; if not, it must determine whether the lawsuit is frivolous. 28 U.S.C. §§1915(a) and 1915(e)(2)(B)(i).

Based on the facts in the plaintiff's affidavit, the court concludes that he does not have the ability to pay the filing fee. The plaintiff's request indicates that he is not employed, he is not married and he has no dependents he is responsible for supporting. Dkt. No. 2 at 1. The plaintiff lists no income, stating "[i]ncome use to be SSI." Id. at 2. The plaintiff lists no expenses and states, "[the plaintiff] use to help with rent and food when he was getting SSI, but once

the payments stopped. That's why he has zero amounts to pay now." Id. Under other expenses, the plaintiff says "I am on Medical through the state. I am on Foodshare through my mom's case. My mom purchases my clothes if I need some and she also pays for my medicine meaning my copays." Id. at 3. Under total monthly expenses, the plaintiff states "[n]othing now because I don't get SSI and It's hard for me to get a job. My dr highly suggest for me to be on SSI." Id. The plaintiff does not own a car or his home or any other property of value, id. at 3-4, and though he checked "Yes" when asked if he had a checking or savings account, he says "[i]t is closed, because there is no more SSI," id. at 3. Under other circumstances, the plaintiff says "I will owe SSI the back pay if I am found not disabled." Id. at 4. The plaintiff has demonstrated that he cannot pay the \$350 filing fee and \$52 administrative fee.

The next step is to determine whether the case is frivolous. A case is frivolous if there is no arguable basis for relief either in law or in fact. Denton v. Hernandez, 504 U.S. 25, 31 (1992) (quoting Nietzke v. Williams, 490 U.S. 319, 325 (1989); Casteel v. Pieschek, 3 F.3d 1050, 1056 (7th Cir. 1993)). A person may obtain district court review of a final decision of the Commissioner of Social Security. 42 U.S.C. §405(g). The district court must uphold the Commissioner's final decision as long as the Commissioner used the correct legal standards and the decision is supported by substantial evidence. See Roddy v. Astrue, 705 F.3d 631, 636 (7th Cir. 2013).

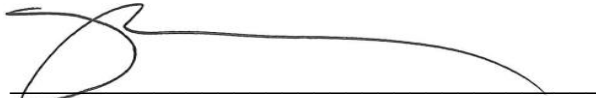
The plaintiff's complaint indicates that he was denied Supplemental Security Income for lack of disability, that he is disabled and that the

conclusions and findings of fact of the Commissioner when denying benefits are not supported by substantial evidence and are contrary to federal laws and regulations. Dkt. No. 1 at 1-2. At this early stage in the case, and based on the information in the plaintiff's complaint, the court concludes that there may be a basis in law or in fact for the plaintiff's appeal of the Commissioner's decision, and that the appeal may have merit, as defined by 28 U.S.C. §1915(e)(2)(B)(i).

The court **GRANTS** the plaintiff's motion for leave to proceed without prepaying the filing fee. Dkt. No. 2.

Dated in Milwaukee, Wisconsin this 26th day of September, 2023.

BY THE COURT:

A handwritten signature in black ink, appearing to read 'P. Pepper', written over a horizontal line.

HON. PAMELA PEPPER
Chief United States District Judge